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SUBJECT: LIECHTENSTEIN SET TO JOIN SCHENGEN AREA

SUMMARY

1. In addition to discussions of the Visa Waiver Program and the question of the MOU with the Czech Republic (SEPTTEL), EU Interior ministers in the February 28 JHA Council gave their backing to Liechtenstein's entry into the Schengen area in spite of the tax fraud scandal now affecting the principality's relations with Germany and other EU countries. Ministers signed a Schengen Protocol that paves the way for Liechtenstein's accession to the borderless zone along with Switzerland in November 2008, subject to ratification of the instrument by the other Schengen members. The Council also confirmed another delay of the entry into force of the second-generation Schengen Information System (SIS II) to September 2009. The Council did not solve all outstanding issues related to the transformation of Europol (European Police Office) into a fully-fledged EU agency. Commission Vice-President Frattini proposed that EU Member States should guarantee "some kind of mutual recognition of (the right to) protection" for people under national security protection. Full text of Council conclusions has been transmitted to EUR/ERA and can be found on the EU Council website (<http://consilium.europa.eu>). END SUMMARY.

LIECHTENSTEIN TO JOIN SCHENGEN AREA

2. EU Interior ministers in the February 28 JHA Council gave their backing to Liechtenstein's entry into the Schengen area in spite of the tax fraud scandal that is rocking the principality's relations with Germany and other EU countries. EU officials reported that the approval "went through without any debate." Commission Vice-President Frattini told media that the tax evasion investigations involving Liechtenstein should not prevent the principality from entering the visa-free travel zone, arguing it was "simply not possible to have an enclave in the center of Europe." EU ministers consequently signed protocols on the accession of the Liechtenstein to Schengen and to Eurodac/Dublin, alongside representatives of Switzerland and Liechtenstein, which was represented by PM Hasler:

-- With the Schengen protocol, Liechtenstein will accede to the Schengen association agreement with Switzerland, granting it the same rights and obligations as the Swiss Confederation;

-- With the Eurodac/Dublin protocol, Liechtenstein will have to accept the entire Dublin/Eurodac "acquis," i.e. the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland.

3. Although the exact date of Liechtenstein's entry into "Schengen" is not set in stone yet, accession is now closely tied to the accession of Switzerland, which is due to join the area by November 2008. The Protocol still needs to be ratified by member countries, which could still provide an opportunity for some EU members to press for better cooperation on tax fraud. Asked if Germany would hold off on approving Liechtenstein's accession, Interior Minister Wolfgang Schauble told reporters: "In principle we are willing to

ratify it, but there have been talks (on combating fraud) and they have to show some effect."

SCHENGEN INFORMATION SYSTEM

¶4. The ministers have also confirmed yet another delay of the entry into force of the second-generation Schengen Information System (SIS II), from December 2008 to September 2009. By that date, all Schengen members will have to move to the new system, thus allowing the sharing of biometric data on top of information gathered in the current database. The ministers also discussed ways of preventing another delay. A group of Member States, including Germany, France, Italy and Spain, has set up an informal "Friends of SIS II" group to push for a speedy launch of the new database.

RETURNING ILLEGALLY-STAYING NON-EU NATIONALS

¶5. The Council noted the state of play of a draft proposal on common standards and procedures in Member States for returning illegally staying non-EU nationals. The proposal deals with issues such as the voluntary departure of returnees, the execution of a return decision through a removal procedure, the postponement of removal, the imposition of entry bans as accompanying measure to a return decision, the form of the return decision, remedies against a return decision and the safeguards for a returnee pending return, etc. The Directive has to be adopted in co-decision with the European Parliament. The Slovenian Presidency, which is pushing for a first-reading agreement with the EP, reported progress in its talks with Parliament and within the competent Council bodies.

FRAMEWORK-DECISION ON COMBATING TERRORISM

¶6. The Council reviewed a proposal amending its 2002 Framework-Decision on combating terrorism, which criminalizes

BRUSSELS 00000325 002 OF 002

terrorist offences prepared or committed with the aim of seriously damaging a country or international organization. The proposal would make incitement to commit terrorist acts, public incitement to commit such acts and recruiting for terrorism and training punishable offenses, while bringing the EU piece into line with the 2005 COE (Council of Europe) Convention on the Prevention of Terrorism. The criminalization of the aforementioned acts under the Framework Decision will make it possible for sanctions and rules on jurisdiction to be applied, as laid down in the Decision. Europol and Eurojust would be able to conduct investigations more efficiently. Most EU Member States support the inclusion of the principle of proportionality in the preamble. The Slovenian Presidency will strive to ensure basic agreement on the text at the April JHA Council.

EUROPOL

¶7. The Council discussed specific issues raised by the draft Decision establishing the European Police Office, which would make Europol a fully-fledged EU Agency. Ministers agreed on the lifting of immunity for Europol officials when participating in operational activities, especially Joint Investigation Teams (JITs), as well as on the principle of staff rotation and the possibility for Europol staff participating in JIT to receive instructions from the team leader. They failed on the issue of the agency's budget, as some Member States, led by net EU budget contributors the Netherlands and Sweden, had questions on Community financing. The Commission will submit additional information to the Council. The Slovenian Presidency will seek a political agreement on the draft at the April JHA Council.

HIRSI ALI: FRATTINI PROPOSES EU-WIDE PROTECTION

¶8. Speaking at the final press conference, Commission Vice-President Frattini said the Council heard a presentation by Dutch Justice Minister Hirsch Ballin concerning the case of Ayaan Hirsi Ali, a former Dutch lawmaker facing death threats for her

outspoken criticism of Islam. The Dutch government stopped paying for her security in October 2007 after she moved to the U.S. Frattini told reporters he had made a proposal to ministers for the EU countries "to think about some kind of mutual recognition of (the right to) protection" for people under national security protection.

Frattini said he "noted a unanimous consensus" among ministers to guarantee the right of free movement. He argued that such EU-wide recognition would be natural "to guarantee one of the most important rights," adding: "We reaffirm the principle of mutual recognition in so many cases. Why not in situations where people are under threat?" Frattini did not go into specifics nor did he provide any indication on the financing of protection costs. While Frattini may find it logical that the host country would have to bear the protection costs, other EU sources voiced doubts such a scheme could be implemented so easily. Hirsi Ali visited the European Parliament in Brussels some two weeks ago. French MEPs started a campaign to generate support for the EU to pay for her security.

OTHER ISSUES

¶9. The Council reviewed the state of play in the ratification of the U.S.-EU Agreements on extradition and mutual assistance in criminal matters signed in Washington in June 2003. The Slovenian Presidency noted that a majority of Member States have already completed the ratification procedure. The topic failed to draw any public comment.

¶10. Justice ministers also:

- Recorded their formal approval (thus confirming a decision reached in principle during the previous Portuguese Presidency) on a draft Directive on certain aspects of mediation in civil and economic matters. This piece is designed to ease access to alternative dispute resolution and promote the settlement of disputes out of court. The draft still has to be reviewed by the European Parliament;

- Heard presentations by the Commission of its proposals for a Directive on ship-source pollution and for the creation of a "Justice Forum" of legal practitioners dealing with the implementation, enforcement and consequences of Justice, Freedom and Security (JLS) policies, to be involved in a dialogue with the Commission JLS department.

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